



ORGANIZATION FOR THE PROTECTION  
AND ADVANCEMENT OF SMALL  
TELEPHONE COMPANIES

21 DUPONT CIRCLE, N.W., SUITE 700  
WASHINGTON, D.C. 20036  
202/659-5990 • 202/659-4819 (FAX)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Geographic Partitioning and Spectrum )  
Disaggregation by Commercial Mobile )  
Radio Services Licensees )

WT Docket No. 96-148

Implementation of Section 257 of the )  
Communications Act - )  
Elimination of Market Entry Barriers )

GN Docket No. 96-113

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REPLY COMMENTS OF  
THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

OPASTCO  
21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036  
(202) 659-5990

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**REPLY COMMENTS OF  
THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

Numerous parties filed comments on August 15, 1996 in response to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking<sup>1</sup> regarding the matter of geographic partitioning and spectrum disaggregation by Commercial Mobile Radio Services (CMRS) licensees. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits its reply

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<sup>1</sup>In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers, GN Docket No. 96-113, Notice of Proposed Rulemaking, 61 FR 38693 (July 25, 1996). (NPRM)

comments in response to the many comments on this topic of paramount importance to rural telephone companies.

## **II. THE RECORD SHOWS THAT RURAL LECS HAVE BEEN FINANCIALLY EXCLUDED FROM THE PCS AUCTIONS**

Many commenters agree with OPASTCO and demonstrate how the bidding rules, so far, have eliminated effective rural LEC participation in the personal communications services (PCS) auctions. For example, Century states that "[r]ural telephone companies did not receive the substantial and specific bid credit and installment payment benefits that the Commission extended to the other designated entities..."<sup>2</sup> As a result, rural LECs found themselves unable to match the unexpectedly high C block bids. Illuminet and the Independent Alliance also found this to be true and concur that, "as the bidding prices escalated, buoyed by the dominance of big-pocket participants, many of those rural telephone companies initially participating eventually faced the reality that the commitment would be beyond their risk tolerance and financial limits."<sup>3</sup>

Commenters also show that the Commission has yet to meet its objective of significantly including rural LECs. As the National Telephone Cooperative Association (NTCA) affirms, "[t]he Commission also believed that rural telephone companies would not have to compete with deep pockets for the Basic Trading Area ("BTA") Block C licenses overlapping their telephone service

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<sup>2</sup>Century comments at p. 7.

<sup>3</sup>Illuminet and the Independent Alliance comments at pp. 5-6.

areas. History has now proven that belief to be incorrect."<sup>4</sup> The United States Telephone Association agrees with this view when it states that evidence from the recent spectrum auctions demonstrates that "rural telephone companies are likely to be financially excluded from obtaining spectrum to serve their traditional service areas."<sup>5</sup> In fact, only three rural LECs won C block licenses on their own, and just "sixteen other C block auction winners appear to be owned in whole or in part by groups of rural telephone companies."<sup>6</sup> Considering the 493 C block licenses, rural telephone companies account for a minuscule portion of PCS participation. The record clearly shows that, to date, rural LECs are under-represented in the PCS arena, contrary to the Congressional intent of Section 309(j)(3)(A).<sup>7</sup>

**III. THE PROPOSED MODIFICATION OF THE PARTITIONING RULES IN MID-STREAM ERECTS A DE FACTO BARRIER TO MEANINGFUL RURAL LEC PCS PARTICIPATION**

The exclusive opportunity for rural local exchange carriers (LECs) to partition PCS spectrum remains "the only specific benefit provided to rural telephone companies during the Commission's implementation of the designated entity provisions

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<sup>4</sup>NTCA comments at p. 4.

<sup>5</sup>USTA comments at p. 2.

<sup>6</sup>Century comments at p. 7.

<sup>7</sup>See 47 U.S.C. Section 309(j)(3)(A), which mandates "the developments and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas..."

of Section 309(j) of the Act."<sup>8</sup> Many rural LECs have built their long-term business plans on this specific partitioning privilege. In fact, the "majority of rural telephone companies appear to have relied upon the Commission's partitioning promises, and to have passed up or limited their participation in the PCS auctions..."<sup>9</sup> Now, since the remaining PCS auctions are in their preliminary stages, it is too late for rural LECs to change their PCS business plans.

Commissioner Susan Ness cautions in this proceeding that the "rule changes we have adopted over the past several months constitute a substantial modification of our rules mid-stream -- after some but not all of the licenses have been auctioned, and before the licensees have had a chance to implement the business plans pursuant to which they bid for their licenses."<sup>10</sup> Rural commenters concur that "[t]he rule change disturbs business plans based on prior rules and destroys what negotiating leverage rural telephone companies may have had."<sup>11</sup> The proposed expansion of the partitioning rules would once again allow deep pocketed bidders to financially overwhelm rural LECs, destroying the only remaining benefit accorded rural telephone companies under Section 309(j). Therefore, however compelling the various arguments are to expand partitioning, because of the mid-stream

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<sup>8</sup>Century comments at p. 1.

<sup>9</sup>Century comments at p. 7.

<sup>10</sup>NPRM, *Separate Statement of Commissioner Susan Ness*.

<sup>11</sup>NTCA comments at p. 5.

timing of the proposed rule change, such expansion would effectively exclude rural telcos from meaningful participation in the provision of PCS.

#### **IV. CONCLUSION**

OPASTCO recommends that the Commission maintain the current exclusive partitioning right for rural telephone companies in the areas related to their LEC service territory. Rural LECs have planned on using the partitioning rules, as they are written, to bring PCS to their areas. It is not appropriate to change these rules at this time, however well-intentioned.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS  
COMPANIES**

By: *Lisa M. Zaina* <sup>AF</sup>  
Lisa M. Zaina  
Vice President and  
General Counsel

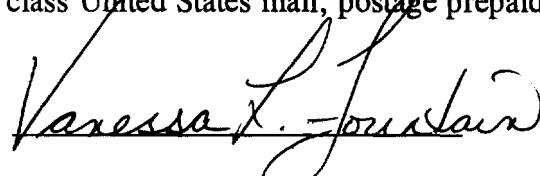
By: *RC. Johnson*  
Ken Johnson  
Regulatory and  
Legislative Analyst

OPASTCO  
21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036  
(202) 659-5990

August 30, 1996

# CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of OPASTCO's reply comments was sent on this, the 30th day of August, 1996 by first class United States mail, postage prepaid, to those listed on the attached sheet.

A handwritten signature in cursive script, reading "Vanessa L. Fountain", written over a horizontal line.

Vanessa L. Fountain

**Service List**  
**WT Docket No. 96-148**

The Honorable Susan Ness, Commissioner  
Federal Communications Commission  
1919 M Street, NW Room 832  
Washington, D.C. 20554

Charles Cosson  
USTA  
1401 H Street, NW, Suite 600  
Washington, D.C. 20005

Susan W. Smith  
Century Personal Access Network Inc.  
3505 Summerhill Rd..  
Texarkana, TX. 75501

David Cosson & L. Marie Guillory  
2626 Pennsylvania Avenue, NW  
Washington, D.C. 30037

Stephen G. Kraskin  
Kraskin & Lesse  
2120 L Street, NW Suite 520  
Washington, D.C. 20037

ITS, Inc.  
2100 M Street, NW  
Suite 140  
Washington, D.C. 20037